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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/043,518 | 01/11/2002 | Kenneth R. Spencer SR. | 00-1303 | 8268 |

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EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,518

Applicant(s)

SPENCER ET AL.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec 17, 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20, 21, 23-25, 27-35 and 37-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 21, 23-25, 27-32, 35, 37-40 is/are rejected.
- 7) ☒ Claim(s) 33, 34, 41 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21, 23-24, 25, 27-28, 29-32, 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepherd and further in view of Yankaitis.

The patent to Shepherd shows a fishing rod having a rod portion, 10, 12, a handle portion 14 with a hollow interior. Shepherd shows a vibrating assembly 16, 18, 20, 22 mounted within the handle assembly which when activated causes vibration to be initiated with the handle portion. Shepherd shows an actuating means 32 associated with the handle portion. The patent to Shepherd shows a fishing rod with a vibrating assembly as discussed above with motor 16, but Shepherd does not show an eccentric mounted to the motor. The patent to Yankaitis shows a fishing rod having a vibrating assembly mounted on the rod portion adjacent the handle as shown in Fig. 2. Yankaitis shows a motor 32 with an eccentric 44, 46, 49 mounted to the motor and rotated by the shaft 42 of the motor to effectuate vibration which is initiated within the housing. In reference to claims 21, 25, and 29, 39, it would have been obvious to provide Shepherd with an eccentric as shown by Yankaitis since merely one equivalent mechanical part is being substituted for another and the function is the same. Yankaitis shows a flywheel

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44, but it would have been obvious to employ a cam since the function is the same and no stated problem is solved.

3. Claims 35, 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Yankaitis for substantially the same reasons as stated in the last Office Action.

4. The patent to Yankaitis shows a fishing rod with a vibrating assembly which comprises a housing 20, a vibrating assembly 32, 34, 48 mounted within the interior of the housing. Yankaitis shows mounting means 24, for attaching the housing to a fishing pole at a selected location for transferring the initiated vibration to the fishing pole since inherently, some of the rotational energy will be transferred directly to the pole.

5. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yankaitis.

6. The patent to Yankaitis shows a fishing rod with a vibration means attached to the rod as discussed above. In reference to claim 37 Yankaitis shows a flywheel 44, but it would have been obvious to employ a cam since the function is the same and no stated problem is solved.

Allowable Subject Matter

7. Claims 33-34, 41, 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 20 is allowed.

Respons to Arguments

9. Applicant's arguments filed December 17, 2003 have been fully considered but they are not persuasive. That Shepherd does not show a vibrating assembly within the handle portion of the fishing rod. However, applicant shows the same structure within the handle of the fishing rod. Since the same structure is shown the effect will be the same, namely, if applicant's structure produces a vibration, then Shepherd will also produce a vibration. Vibration is periodic motion and the line of Shepherd moves in a circle at the end, which is periodic motion. Rotation of the line is the start of the vibration, which starts in the motor. Shepherd has a rotating shaft as disclosed in column 1, line 61 and the lure 30 is an eccentric member mounted to and rotated by the shaft. In regard to claims 29 and 41, claim 29 states that the eccentric member is mounted to the shaft at a position within the hollow cavity. The claim does not require that the eccentric member is wholly contained in the hollow cavity and thus maybe inside and outside the hollow cavity. Claim 41 requires that the eccentric member be positioned within the hollow cavity. Thus, while claims 29 and 41 are similar, they are not the same. In regard to claim 35, Yankaitis shows a motor 32 with a rotating shaft 42. The arm of Yankaitis is an eccentric member since it is mounted on the edge of the flywheel 44 on eccentric 46 as shown in Fig. 4. See column 2, lines 32-47. The vibration clearly initiated within the housing. The vibrating assembly of Yankaitis can be equated with a cam since the flywheel has an eccentric mounted thereto and an arm 48 extends around the fishing line and the rotation of the flywheel causes the line to move

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in a rotational pattern as shown in Fig. 4 that is not circular but resembles the profile of a cam. See column 2, lines 57-65. Hence, the end result is the same as if a cam were employed.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive style with a large, stylized "K" and a checkmark-like flourish at the end.

Kurt Rowan
Primary Examiner
Art Unit 3643

KR